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In the Supreme Court of the United States

OCTOBER TERM, 1970

No.

JAMES D. HODGSON, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Secretary of Labor, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 19–26) is reported at 426 F. 2d 969. The opinion of the district court (App. C, *infra*, pp. 28–42) is unreported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, p. 27) was entered on May 8, 1970. On July 30, 1970, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including

September 8, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in an action to set aside a union election pursuant to Title IV of the Labor-Management Reporting and Disclosure Act of 1959, the Secretary of Labor may allege only those violations of the Act which were protested internally by the complaining union member, or whether he may also allege additional violations disclosed by his investigation which he has given the union an opportunity to correct.

2. Whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification uniformly imposed" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, notwithstanding that (a) it renders nearly 90 percent of the membership ineligible to seek office, and (b) it imposes an unequal burden on members working on different shifts, and enables some members to qualify without attending any meetings at all by having their absences excused because of the performance of overtime work.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401, 402, are set forth in Appendix E, *infra*, pp. 45–47.

STATEMENT

This action was brought by the Secretary against respondent Local Union under title IV of the Labor-Management Reporting and Disclosure Act of 1959. The United Steelworkers of America (respondent "International Union") intervened as a party defendant.

The Local Union held a general election of officers on June 12, 1967. Nicholas Hantzis, an unsuccessful candidate for the office of president, protested the conduct of the election to the Local Union and then to the International Union. Among the matters protested internally by Hantzis was the use of union facilities to prepare campaign literature for the Local Union's incumbent president (App., *infra, p.* 39). After failing to obtain relief, Hantzis filed a complaint with the Secretary of Labor pursuant to Section 402(a) of the Act (29 U.S.C. 482(a)) (App., *infra,* pp. 39–40). The complaint again charged illegal use of union facilities and added a charge that an unreasonably restrictive meeting attendance requirement had been imposed as a condition of candidacy in the election (App., *infra,* p. 40).[1]

After investigating Hantzis' complaint, the Secretary, by letter dated November 21, 1967, notified both respondents of his findings that the meeting attendance requirement imposed as a condition of candidacy was not a reasonable qualification and had, moreover, not been uniformly imposed, and that union facilities

[1] In his internal protest, Hantzis did not challenge the meeting attendance requirement, but did complain of the manner in which it was applied. See *infra*, note 11, p. 17.

had been improperly used to promote the candidacy of the Local Union's incumbent president, in violation of Section 401 (e) and (g) of the Act (29 U.S.C. 481 (e) and (g)) (App. *infra*, p. 40). By letters dated November 22, 1967, December 26, 1967, and January 30, 1968, respondents agreed to extend the time within which suit might be filed to set aside the election until March 1, 1968, in order to permit the parties to attempt resolution of the issues involved without litigation. On December 18, 1967, and on January 30, 1968, representatives of the Secretary met with representatives of respondents and discussed the Secretary's findings (App., *infra*, p. 41). When respondents refused to undertake remedial measures, this action was filed on February 29, 1968. The Secretary's complaint alleged that an unreasonable meeting attendance qualification had been imposed upon the right of the Local Union's members to be candidates for office, and that such qualification had not been uniformly imposed, all in violation of Section 401(e) of the Act (29 U.S.C. 481(e)), and that union funds had been expended to promote the candidacy of the incumbent president, in violation of Section 401(g) of the Act (29 U.S.C. 481(g)).

During the relevant period, the Local Union had approximately 600 members (Tr. 28[2]; App., *infra*, p. 31), employed by the Howmet Corporation, Aerosystems Division, Loud Products (Tr. 26, 57). Approximately 400 employees worked the day shift, from 7 a.m. to 3:30 p.m. About 200 employees worked the

[2] "Tr." refers to the transcript of the trial in the district court. "R." refers to the record in the court of appeals.

swing shift, whose regular hours were 3:30 p.m. to midnight. The third shift, consisting of seven or eight employees, worked during the early morning hours. The Local Union held its monthly meetings in two sessions: one for the day shift, beginning at 7 p.m. on the second Monday of each month; and one for the swing shift, beginning at varying times between 12:30 and 1 a.m. on the second Tuesday of each month (App., *infra,* p. 31). Members employed on the swing shift frequently worked overtime until 1 or 2 a.m. (Tr. 238), and were credited with excused absences and counted as having attended the meeting when they worked past the scheduled starting time (Tr. 239–240). In January 1967, the starting time of the swing shift meeting sessions was changed to 1 p.m. (App., *infra,* p. 31). An average of 46 members attended each day shift meeting. Attendance at the swing shift meetings averaged 25 members from August 1965 to December 1966, and dropped to an average of 14 members after the change in starting time in January 1967 (App., *infra,* pp. 31–33).

The qualification which the Secretary sought to challenge, as set forth in the International Union's Constitution and its By-Laws for Local Unions, requires a candidate for local union office to have attended at least one-half of the regular meetings of his Local Union for 36 months previous to the election, "unless his Union activities or working hours prevented his attendance" (App., *infra,* p. 30).[3]

[3] Since respondent Local Union was not chartered until May 1965 (App., *infra,* p. 29), the 36-month period was not applicable. It was determined that in order to qualify as candidates in the June 1967 election, members would have to receive

Respondent Local Union's meeting attendance register showed that only 36 members had attended the required number of meetings (App., *infra*, p. 33). The district court estimated that an additional 24 of the 200 swing shift employees satisfied the requirement by reason of absences excused because of overtime work (App., *infra*, p. 33). At least one member who had not attended a single meeting during the critical period had sufficient credits for overtime work to qualify as a candidate (App., *infra*, p. 34). Four nominees for office were declared ineligible for failure to attend sufficient meetings (App., *infra*, p. 36). These members had attended five, six, seven and nine monthly meetings respectively.[4]

At the trial, an expert witness for the governnent testified that a study of the constitutions of 72 national and international unions including 90 percent of the country's total union membership showed that only twelve of these unions imposed a constitutional requirement of attendance at meetings as a qualification of candidacy for local offices, and that respondent

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credit for eleven of the 21 regular meetings held between August 1965 and April 1967 (App., *infra*, p. 31). Hantzis complained of the failure to include the May and June 1965 meetings in applying the requirement (R. 79).

[4] One of the disqualified nominees was erroneously declared ineligible, since he should have been credited with six excused absences for overtime work (App., *infra*, p. 36). One nominee, who had attended eight meetings, was permitted to be a candidate although he did not have sufficient credits for overtime work to qualify (App., *infra*, p. 37). These discrepancies were the basis of the Secretary's allegation that the qualification had not been uniformly applied (see *supra*, p. 3). The district court held that the alleged violations were "unintentional mistakes" (App. *infra*, p. 42).

International Union is one of only two unions specifying a meeting attendance requirement covering a period as long as three years (Tr. 305, 307–308). He also testified that, in his opinion, attendance at union meetings is not necessary to give members knowledge of the union's affairs, and that meeting attendance qualifications have not operated to increase attendance at union meetings (Tr. 325). Respondents introduced no contrary evidence, and presented no testimony to support their contention that members who attend union meetings are better qualified to serve as officers than those who do not.

The district court held that the use of union facilities to reproduce the campaign literature of the Local Union's incumbent president was a violation of Section 401(g), which "may have affected the outcome" of the election for the office of president, and ordered the union to conduct a new election for that office under the supervision of the Secretary (App., ~~*supra,*~~ p. 42). The district court also ruled that the Secretary could properly include in his complaint the charge that the meeting attendance qualification was unreasonable, since he had afforded respondents adequate notice and an opportunity to remedy the alleged violation before filing suit. The court held, however, that the meeting attendance requirement was not unreasonable (App., *infra,* pp. 41–42). The court found that the requirement was "designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of

INFRA

the union;" and that it was reasonable, "because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (App., *infra,* pp. 33–34).

The court of appeals affirmed. It held that the Secretary had no standing to challenge the reasonableness of the meeting attendance qualification since the requirement had not been challenged in the complaining member's internal union protest and "Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others" (App., *infra,* p. 22). The court of appeals, accordingly, found it unnecessary to consider whether the attendance requirement violated the Act.

REASONS FOR GRANTING THE WRIT

1. In *Wirtz* v. *Local Union No. 125, Laborers' International Union,* No. 1117, O.T., 1966, this Court was asked to determine whether the Secretary's power to institute an action to invalidate a union election is "limited to the particular allegation made by a complaining union member."[5] The specific issue presented in the *Laborers' International* case was whether the Secretary could challenge violations which allegedly had occurred during a union general election, even though the internal union complaint had involved only the runoff election held five weeks later. The Court granted certiorari, and unanimously held that the

[5] See, also, our petition for certiorari in *Wirtz* v. *Local Unions Nos. 9, 9–A, and 9–B, International Union of Operating Engineers,* No. 1116, O.T., 1966. That case became moot while the petition was pending. See 387 U.S. 96.

Secretary was entitled to challenge the general election because, on the facts of that case, the "union had fair notice from the violation charged by (the union member) in his protest of the runoff election that the same unlawful conduct probably occurred at the earlier election as well." 389 U.S. 477, 481. The Court explicitly found it unnecessary to consider in *Laborers' International* whether "a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered in his investigation of the member's complaint." 389 U.S. at 482.

Although the precise question involved here was thus not decided in *Laborers' International,* the restrictive interpretation of the Secretary's authority adopted by the court below is inconsistent with the purpose of Title IV as articulated in this Court's opinion in *Laborers' International.* In rejecting the union's contention that the Secretary is limited to the allegations made in the union member's initial complaint, the Court pointed out that "neither the language of the statute nor its legislative history" supports such a restrictive view of the Secretary's role.

It is true, of course, that the Act authorizes the Secretary to step in only at the request of a union member who has exhausted internal union remedies. Section 402(a), *infra,* p. 46. This requirement is significantly different, however, from a statutory provision which requires exhaustion of the remedies of a governmental administrative agency or which vests primary jurisdiction over a dispute in such an agency. Such statutes are designed, in varying degrees, to assure a leading role for the expert agency in finding

the facts, interpreting the facts, initially construing the statute and, in general, contributing to uniformity in the administration of the law. To the extent that any of these purposes are to be served under the present Act, they are served by the Secretary's investigation and determination of whether to bring a lawsuit, rather than by the requirement that there must be a complaining union member who has exhausted internal union remedies. That requirement is designed merely to assure that the results of union elections will not be disturbed if they are satisfactory to all members of the union or if dissatisfaction with the results can be adequately alleviated through internal union remedies. Congress has, of course, not conferred any form of governmental authority over these disputes on the unions, whose officers tend to have an adversary interest in such disputes; and it is obvious that the various unions involved in such disputes, with their diversity of views and of internal remedies, could not be expected to play a role comparable to that of a single, expert administrative agency in promoting consistency in the Act's interpretation or administration.

Accordingly, the statute does not, in terms, limit the Secretary's investigation or his authority to institute suit to the violation alleged in the complaint. It empowers him to bring a civil action, after investigating the union member's complaint, "if he finds probable cause to believe that *a* violation of this title has occurred * * *" (Section 402(b), *infra*, pp. 46–47) (emphasis added). It is significant that the

statute is not limited to "the violation alleged" but is framed in terms which entitle the Secretary to proceed, after a protest has been made to the union and rejected, if he finds *any* violation to have occurred. This language was deliberately chosen by Congress. A bill Cong., 1st Sess., 105 Cong. Rec. 2067) provided that if the union member alleged a violation of the Act, the Secretary was to investigate "such allegation" and institute an action if he found "probable cause to believe such allegation is true." Moreover, Title IV rights—which are important guarantees of union democracy—are enforceable *solely* by the Secretary.[6] And as the Court noted in *Laborers' International,* "it is most improbable that Congress deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities, yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint." 389 U.S. at 482. The Court also noted that

> [S]o to constrict the Secretary would be inconsistent with his vital role * * * in protecting the public interest bound up in Title IV. The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election. Title IV's special function in furthering the general goals of the LMRDA is to insure free and democratic union elections, the regulations of the union electoral

[6] Congress rejected proposed bills which would have made Title IV rights enforceable in a private suit. H.R. 8342, 86th Cong., 1st Sess., 105 Cong. Rec. 15887; S. 748, 86th Cong., 1st Sess., 105 Cong. Rec. 1276.

> process enacted in the Title having been regarded as necessary protections of the public interest as well as of the rights and interests of union members. [389 U.S. at 482–483.]

In view of the Secretary's "exclusive enforcement jurisdiction", his "broad investigative powers"[7] and his "vital role in protecting the public interest", we submit that it makes little sense to restrict the scope of the lawsuit brought by the Secretary to the four corners of the complaint originally made by the union member. As a number of courts have recognized, union members do not, as a rule, file carefully drafted complaints. *E.g., Wirtz* v. *Local Union 169, International Hod Carriers,* 246 F. Supp. 741 (D. Nev.). Consequently, if the complaint were the measure of the Secretary's powers, he would often be artificially limited, as here, by technical flaws in that document or by the individual member's failure to appreciate the full scope or consequences of the violation of which he is complaining. Such a limitation is plainly inconsistent with the Act's design to empower the Secretary to vindicate through the courts the public's right to democratically run unions, rather than merely to advance the private rights of the individual union members who might complain.

We believe that the Secretary's position in this case is entirely consistent with the limited purpose (see *supra,* p. 10) of the requirement in Section 402(a) that

[7] The investigation conducted by the Secretary is not limited by the subject matter or scope of the complaint received, or of the preceding internal union protest. *Wirtz* v. *Local 191, International Bro. of Teamsters,* 321 F. 2d 445 (C.A. 2); *Local 57, International Union of Operating Engineers* v. *Wirtz,* 346 F. 2d 552 (C.A. 1).

the union member exhaust his internal union remedies before the Secretary can step in.[8] Complaining union member Hantzis gave respondents full opportunity to remedy their violation of Section 401(g), the only violation Hantzis was aware of. Had the union provided a remedy to Hantzis' complaint, the Secretary would not have begun his investigation. Once that investigation was begun, however, there was no reason to require that the violations it revealed be channeled through another union member's complaint, particularly when, as here, the Secretary had given the union ample notice of the violations he had uncovered and opportunity to consider and resolve all of the alleged violations (see *supra*, pp. 3–4). As this Court pointed out in *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 389 U.S. 463, "Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV." 389 U.S. at 473.[9]

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[8] See S. Rep. No. 187, 86th Cong., 1st Sess., p. 21.

[9] There are a number of district court decisions holding that the Secretary could not bring suit if the alleged illegality which was the basis of the suit had not been presented to the union for action prior to the initiation of suit. *E.g.*, *Wirtz* v. *Local Union 169, International Hod Carriers*, 246 F. Supp. 741 (D. Nev.); *Wirtz* v. *Local Unions No. 406, etc., Operating Engineers*, 254 F. Supp., 962 (E.D. La.); *Wirtz* v. *Local Union No. 450, etc., Operating Engineers*, 63 LRRM 2105, 54 Lab. Cas. ¶11,451 (S.D. Tex.). These cases did not hold, however, that the Secretary was barred from seeking effective relief merely because the full ramifications of the illegality were not specified in the internal complaint. They, in fact, allowed relief as to "every issue which the defendant union had a fair oppor-

We note, finally, that the issue in this case is of great importance to the administration of the election provisions of the Act. Most of the election suits under the Act to date have involved unreasonable restrictions on candidacy or other illegal practices which applied to most of the offices at stake in each election. And, as noted above, few union members file clear, precise complaints which specifically allege that the violation complained of affects all the contests in the election. Because of the time factors involved in this type of litigation, the Secretary realistically could not be expected to encourage a more comprehensive complaint by a union member to the union after discovering the full extent of the illegality. Thus, under the decision below, the Secretary would be effectively prevented from seeking complete relief in many cases where such relief would be warranted.

2. Because of its national importance in the administration of the Act, we urge this Court also to decide the substantive issue left unresolved by the court below: whether the meeting attendance qualification on candidacy applied in the challenged election is a "reasonable qualification uniformly imposed," as required by Section 401(e). This issue was decided by the dis-

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tunity to consider and resolve." *Wirtz* v. *Local Union 169*, *supra*, 246 F. Supp. 741, 752.

Our position, however, is that the Secretary may bring suit with respect to any violation he finds in the course of his investigation whether or not that violation is alleged in the complaint. This position has been upheld in *Wirtz* v. *Local 545, Operating Engineers*, 64 LRRM 2449 (N.D.N.Y.); *Wirtz* v. *Local 1377*, IBEW, 63 LRRM 2029, 54 Lab. Cas. ¶ 11,391 (N.D. Ohio). See also *infra*, note 10, p. 15.

trict court (see *supra*, pp. 7–8), and the record as to it is complete. The importance of the issue stems not only from the fact that the three-year meeting attendance requirement in the respondent International Union's constitution applies to more than three thousand local unions, but also from the basic misunderstanding reflected in the district court's decision of the principles governing the determination whether restrictions on candidacy for local union office are reasonable.[10]

In *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, this Court held invalid a union bylaw which limited eligibility for certain major union offices to members who had served in one or more elective offices. The Court emphasized the congressional intent to keep union leadership responsive to the membership through the election process, and stated that "The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499. "Given the objective of Title IV," the Court held, "a candidacy limitation which renders 93% of union members ineligible for office

[10] Two other district courts have followed the decision of the district court in the instant case, permitting the Secretary to challenge the validity of the rule even though it was not challenged in the union complaint, but upholding its reasonableness. *Shultz v. Local Union 1299, Steelworkers*, 73 LRRM 2673, 62 Lab. Cas. ¶ 10,720 (E.D. Mich.), and *Shultz v. Local 1150, Steelworkers* (S.D. Ind., Civ. Action No. IP 68–C–76, May 19, 1970).

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can hardly be a 'reasonable qualification.' " *Id.* at 502. *Id.* at 502.

We submit that the qualification imposed in the instant case is unreasonable under the standard set forth by this Court in the *Hotel Employees* case. Nearly 90 percent of the union members here were rendered ineligible by the meeting attendance rule, a fact which, in the absence of extraordinary circumstances, would seem to render the qualification invalid *per se*. Respondents' argument to the courts below—that the attendance requirement was designed to insure that candidates for union office are familiar with and interested in union problems—

> assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in [union affairs] * * *. But Congress' model of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. * * * [*Hotel Employees, supra,* 391 U.S. at 504.]

Moreover, here, as in *Hotel Employees,* the union "is not faithful to its own premise." 391 U.S. at 504. In *Hotel Employees,* a member could be *appointed* to any office without satisfying the prior office-holding requirement. In this case, a member could be eligible as a candidate without ever having attended a single meeting, provided that he was employed on the swing shift and was called upon to work overtime on a sufficient number of meeting nights. This aspect of

the application of the requirement, we believe, raises substantial doubt not only as to the qualification's reasonableness, but also as to whether it is, or can ever be, "uniformly imposed".[11]

The Court stated in *Hotel Employees* that "Congress plainly did not intend that the authorization in § 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach." 391 U.S. at 499. This authorization, like exceptions to other remedial legislation, should be narrowly construed, and the burden of proof should rest upon the party asserting it. See, *e.g., Phillips Co.* v. *Walling,* 324 U.S. 490, 493; *Mitchell* v. *Kentucky Finance Co.,* 359 U.S. 290, 295. Respondents here failed not only to introduce evidence that union members become better qualified to hold union office by attending meetings, but also failed to rebut expert testimony in this record to the contrary. See *supra,* pp. 6–7. As in *Hotel Employees,* the respondent unions have failed to sustain their burden. Cf. 391 U.S. at 503.

[11] We also argued in the courts below that the qualification was not uniformly imposed in this particular election because one candidate was disqualified notwithstanding a combined record of meeting attendance and excused absences which satisfied the requirement, while another member was permitted to be a candidate although he did not satisfy the requirement, either by actual attendance at meetings or by a combination of attendance and excused absences. The district court found that these aberrations were the result of "honest, unintentional mistakes" (App., *infra,* p. 42). If certiorari is granted, we reserve the right to argue that these deviations from the rule, no matter how well-intended, constituted non-uniform imposition of the qualifications which warrants setting aside of the election.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1970.

APPENDIX A

United States Court of Appeals for the Ninth Circuit

Nos. 24759 and 24800

GEORGE P. SHULTZ, SEC. OF LABOR, PLAINTIFF-APPELLANT, CROSS-APPELLEE

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, ET AL., DEFENDANTS-APPELLEES, CROSS-APPELLANTS

Appeal from the United States District Court for the Central District of California

Before BARNES, KOELSCH and KILKENNY, Circuit Judges

KOELSCH, *Circuit Judge:* The Secretary of Labor brought this action in the district court pursuant to § 402(b) of the Labor Management Reporting and Disclosure Act against Local Union 6799, United Steelworkers of America, to secure judgment setting aside an election of officers and directing the Local to conduct a new election under supervision of the Secretary.

That section authorizes the Secretary to commence and prosecute such an action on timely complaint of a union member who has exhausted the available internal remedies afforded by the union whenever the Secretary, upon an investigation, finds probable cause to believe that the election was not in compliance

with section 401 of the Act; Section 402(c) empowers the court to order a new election if it finds the violation "may have affected the outcome of an election."[1]

The Secretary asserted three separate claims:

(1) that a rule of the International, applicable to all Locals, including Local 6799, prescribing qualifications for candidate eligibility, exceeded the permissible limits of provisions in Section 401(e) and tainted the whole election, thus requiring a complete new election for all officers;

(2) that the eligibility rule (even if valid) was not uniformly applied, as required by Section 401(e), to prospective candidates for the office of Financial Secretary, thus requiring a new election for that office;

(3) that the International had used union funds to

[1] Section 402 (29 U.S.C. 482) provides:

"(a) A member of a labor organization—(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 (section 401) of this title * * *

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization * * * to set aside the invalid election * * *

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds * * * (2) that the violation of section 481 (section 401) of this title may have affected the outcome of an election, the court shall declare the election * * * to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization * * *."

promote the candidacy of one of the candidates for the office of President in violation of Section 401(g), thus requiring a new election for that office.[2]

The district court allowed the International Union to intervene and, after a hearing, held the election invalid solely as to the office of president. Judgment was entered ordering a limited new election. The matter is here on the Secretary's appeal and the union's cross-appeal.

Appellees make a threshold objection to the consideration of the Secretary's appeal. They urge that the Secretary lacked standing to assert the two Section 401(e) claims upon which judgment went against him. Their contention, in substance, is: that Section 402 of the Act does not permit the Secretary to allege a particular violation of Section 401 in a suit to set aside an election unless a union member first unsuccessfully protests that violation to the union and that this statutory precondition was not met. The Secretary, although conceding that the union member's protest was silent as to any 401(e) violation, argues that this fact is immaterial; his position is that Section 402 imposes no such limitation but permits the Secretary to assert any violation of Section 401 disclosed by his own in-

[2] Section 401 (29 U.S.C. 481) provides:

"(e) In any election * * * a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject * * * to reasonable qualifications uniformly imposed). * * *

(g) No moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for holding an election.

vestigation even though not so protested by the union member.[3]

The issue poses difficult problems and any answer is not entirely free of doubt; however, we are convinced and therefore conclude that Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others.[4]

Section 402 is ambiguous. Its exhaustion of remedies precondition logically suggests that the union must be afforded fair notice of the purported wrong and a reasonable time ["three calendar months" is the period designated in 402(a)(2)] to take corrective measures through its own internal machinery before complaint may be filed with the Secretary;[5] yet the section also provides that the complaint (to the Secretary) may allege "any" violation and the Secretary must bring a civil action to set aside the invalid election within sixty days after receiving the com-

[3] The sole member-protest of the election to either the local or international union was made by Nicholas Hantzis, a candidate for the office of president of the Local; his protest concerned an alleged diversion of union funds to defray expenses of Kenneth Rose, the incumbent president, in conducting his successful campaign for reelection. The Secretary acknowledged that this protest did not afford the unions "fair notice" that the union's candidacy eligibility requirement might be invalid or that it was not uniformly imposed; he further acknowledged that Hantzis made no demand on the union to act on those matters.

[4] Both parties rely on and quote extensively from *Wirtz* v. *Laborers Union*, 389 U.S. 477 (1968). But in that decision the Court declined to express an opinion on the subject, and was careful to so note.

[5] The Court's observation in *Wirtz* v. *Local 153, Glass Bottle Blowers Association of the United States and Canada*, 389 U.S. 463, 472 (1968) is relevant; "The stated commitment is to postpone governmental intervention until the union is afforded the opportunity to redress the violation."

plaint. To allow the Secretary wide ranging power to urge "any" violation would in effect nullify the exhaustion requirement; not only might the union be completely unaware of the asserted violation prior to the suit but, even if the Secretary gives notice before filing suit, the "three calendar months" period allowed for corrective action by the union would be rendered virtually meaningless. However, if the broad language appearing in the section is more narrowly construed, these inconsistencies disappear and the several provisions become harmonious.[6]

Moreover, we believe the background and legislative history of the Act also support our construction. As said in *Wirtz* v. *Local 153, Glass Bottle Blowers Association of the United States and Canada, AFL–CIO*, 389 U.S. 463, 470 (1968):

> Title IV's special function in furthering the overall goals of the LMRDA is to insure "free and democratic" elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs. The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a "general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the

[6] Section 601 should also be noted. Although vesting the Secretary with broad powers to conduct, on his own initiative, investigations into union affairs, it does not authorize him to commence an action even if his investigation leads him to believe a union is violating the Act. He may only report the matter to interested persons. *Wirtz* v. *Laborers Union*, 389 U.S. 477, 482, f.n.5.

agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts." [7]

We turn to the union's appeal. The agreed facts fully justify the district court's finding of a union violation of Section 401(g) with respect to the election for the office of president. They disclose that the International donated materials, secretarial help and the use of its facilities to print advertising leaflets for Kenneth Rose, the Local's incumbent president, which Rose used in conducting his successful campaign for reelection.

The expense was undoubtedly "minimal," as appellees argue, but it nevertheless reflected the outlay of a sensible sum of union money. Indeed the International, shortly after the Secretary began his investigation and made known his interest in the matter, presented Rose a bill for $13.04, which he immediately paid.

The legislative history of the Act does not indicate that Congress intended to place a limit on the amount that a union might lawfully spend to aid a candidate for office or that it meant to encourage troublesome factual disputes over how much (or little) money constitutes a "de minimus" amount; and the

[7] Since we hold that an accommodation of the public interest and union autonomy can best be achieved by requiring a member to invoke a union's internal remedies before the Secretary can act, we deem it immaterial that in this case the Local had notice from the Secretary of the two asserted violations for more than ninety days before he commenced this action.

Neither are we persuaded by the Secretary's argument, that affirmance of the judgment ordering a new election for president under the supervision of the Secretary, requires a present judicial determination of the validity of the candidate-eligibility rule. If, as we concluded, the issue is not properly before the court, an opinion on that matter would be merely advisory.

language of the provision itself is clear and unambiguous. It provides in terms that "no moneys" of a union shall be spent to promote the candidacy of any person for union office.

Likewise unconvincing is appellees' argument that a union is not in violation unless it grants the request of one candidate for financial aid and rejects that of another. Granted that the object of the section is to prohibit discrimination between candidates and that this condition would not exist if a union contributed equally to all candidates for a particular office, the inference is plain that the unlikely probability of even handed union financial aid to several candidates, as well as financial aid to an individual candidate, is equally prohibited. Congress declared in the second of the two sentences comprising the provision that "Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates and other expenses necessary for the holding of an election."

We also approve, as not "clearly erroneous" the district court's companion finding that the violation "may have affected" the outcome of the presidential election. The financial aid was reflected in the form of three separate campaign dodgers or pamphlets; in all some 1200 were printed; obviously they were calculated to secure voter support for Rose. Although the record does not disclose the approximate number circulated and posted, it is clear that many were. Whether they produced the desired result is of course impossible to determine, but proof of that fact is not required. *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492, 505–8 (1968). However, it does appear that the number of dodgers was double that of the Local's membership and that Rose won

the election by a narrow margin. Thus it is not improbable that the financial aid "may have affected" the election.

The judgment is affirmed.

_____ _____,
_____ _____,
_____ _____,
United States Circuit Judges.

APPENDIX B

JUDGMENT

United States Court of Appeals for the Ninth Circuit

Nos. 24759 and 24800
Civil No. 68–326–EC

GEORGE P. SHULTZ, SEC. OF LABOR, PLAINTIFF-APPELLANT, CROSS-APPELLEE

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL., DEFENDANTS-APPELLEES, CROSS-APPELLANTS

Appeal from the United States District Court for the Central District of California.

This cause came on to be heard on the transcript of record from the United States District Court for the Central District of California and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of said district court in this cause be, and hereby is affirmed.

Filed and Entered May 8, 1970.

A True Copy attest:

WILLIAM B. LUCK, *Clerk.*

APPENDIX C

United States District Court

Central District of California

Civil No. 68-326-EC

GEORGE P. SHULTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having come before this court for trial on March 25, March 26, and April 21, 1969, the plaintiff appearing through its counsel, Wm. Matthew Byrne, Jr., United States Attorney, Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division, and Dzintra I. Janavs, Assistant U.S. Attorney, by Dzintra I. Janavs and by Cornelius Donoghue, Attorney in the Department of Labor, and the defendants appearing by their counsel, Michael H. Gottesman, Arnold, Smith & Schwartz, by Jerome Smith, and Carl Frankel, the court having considered the evidence, both oral and written, and having read the written briefs and arguments, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. Defendant Local Union 6799 is, and at all times relevant herein, has been, an unincorporated association maintaining its principal offices at 103-1/2 East Holt Boulevard, City of Ontario, San Bernardino County, State of California, and has been a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the LMRDA (29 U.S.C. 402(i), 402(j) and 481(b)).

2. Said defendant is, and at all times relevant herein has been, chartered by and subordinate to defendant in intervention, the United Steelworkers of America, AFL–CIO, hereinafter referred to as the defendant International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the LMRDA (29 U.S.C. 402(i) and 402(j)).

3. Defendant Local Union 6799 was chartered by the defendant International on May 27, 1965, and had approximately 578 members as of April, 1967.

4. Pursuant to Article VII, Section 5 of the intervening defendant International's Constitution defendant Local Union 6799 is deemed to have adopted, and did adopt, the Standard By-Laws for Local Unions, issued by the International.

5. Defendant Local Union 6799, at all relevant times, has been conducting its affairs under the aforesaid By-Laws (as republished January, 1967); the Constitutions of International Union, United Steelworkers of America, AFL–CIO (adopted September, 1964, and September 21, 1966) and the Local Union Elections Manual of the United Steelworkers of America (as amended to January 7, 1967). The election provisions of the aforesaid By-Laws, Constitutions and Elections Manual were, and are now,

subject to the provisions of Title IV of the LMRDA.

6. Article VII, Section 9, of the Constitution of International Union, as relevant, provides:

> No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless
>
> * * * * *
>
> (c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1967, election, unless his Union activities or working hours prevented his attendance.

This requirement is applicable to 3,700 Local Unions in United Steelworkers of America.

7. Article IV, Section 5, of By-Laws for Local Unions, as relevant, provides:

> No member shall be eligible for election as an Officer or Grievance Committeeman unless
>
> * * * * *
>
> (c) He has attended at least one-half of the regular meetings of his Local Union for 36 months previous to the election, unless his Union activities or working hours prevented his attendance. Defendant took appropriate steps to notify members of this eligibility requirement.

8. On May 8, 1967, Frank S. McKee, a Staff Representative of the defendant International, sent the following telegram to I. W. Abel, President, United Steelworkers of America:

> Local Union 6799 District 38, was chartered May 27, 1965. Contract with H. W. Loud Co., of Pomona, Calif., signed July 15, 1965. First regular local union meeting scheduled and held in August, 1965. Several meetings were held between May 27, 1965, the date the local union received its charter and August of 1965. In order that this local union will be in compliance with Article VII, Section Nine of the International Constitution would you please

advise if the eligibility to hold a local union office began with the first regular local meeting held in August 1965 or would it be necessary to count the meetings held starting immediately after May 27, 1965.

9. On May 9, 1967, I. W. Abel replied:

REURTEL members of Local Union 6799 would have to have credit for one half the regular meetings held beginning August 1965 to meet the meeting attendance requirement.

10. Between August, 1965, and April, 1967, the employees of Howmet Corporation, Aerosystems Division, Loud Products, Pomona, California, worked three shifts. The regular hours for the approximately 400 day shift employees were 7:00 a.m. to 3:30 p.m. The regular hours for the approximately 200 swing-shift employees were 3:30 p.m. to 12:00 midnight, but a substantial number of the swing-shift employees frequently worked until 1:00 a.m. or 2:00 a.m. The third shift, consisting of about seven or eight persons, worked during the early morning hours.

11. Prior to January, 1967, defendant Local Union 6799 held one meeting each month conducted in two sessions: one for the day shift on the second Monday of each month, scheduled to begin at 7:00 p.m., and another for the swing-shift on the second Tuesday of each month, scheduled to begin in various months at varying times between 12:30 a.m. and 1:00 a.m. In January, 1967, swing-shift sessions were changed to 1:00 p.m., the second Tuesday of each month.

12. Twenty-one (21) regular monthly meetings were scheduled to be conducted by defendant Local Union 6799 between August, 1965, and April, 1967. The dates of these meetings, with the number of members attending each set forth in parentheses, were as follows:

August 30, 1965 (day shift), (51).
September 13, 1965 (day shift), (75).
October 11, 1965 (day shift), (58).
November 8, 1965 (day shift), (67).
December 13, 1965 (day shift), (49).
January 10, 1966 (day shift), (49).
February 14, 1966 (day shift), (38).
March 14, 1966 (day shift), (60).
April 11, 1966 (day shift), (44).
May 9, 1966 (day shift), (42).
June 13, 1966 (day shift), (53).
July 11, 1966 (day shift), (48).
August 8, 1966 (day shift), (43).
September 12, 1966 (day shift), (28).
October 10, 1966 (day shift), (36).
November 14, 1966 (day shift), (41).
December 12, 1966 (day shift), (25).
January 9, 1967 (day shift), (35).
February 13, 1967 (day shift), (19).
March 13, 1967 (day shift), (41).
April 10, 1967 (day shift), (55).
August 31, 1965 (swing shift), (44).
September 14, 1965 (swing shift), (36).
October 12, 1965 (swing shift), (17).
November 9, 1965 (swing shift), (53).
December 14, 1965 (swing shift), (19).
January 11, 1966 (swing shift), (30).
February 15, 1966 (swing shift), (24).
March 15, 1966 (swing shift), (23).
April 12, 1966 (swing shift), (22).
May 10, 1966 (swing shift), (25).
June 14, 1966 (swing shift), (28).
July 12, 1966 (swing shift), (31).
August 9, 1966 (swing shift), (20).
September 13, 1966 (swing shift), (18).
October 11, 1966 (swing shift), (25).

November 15, 1966 (swing shift), (5).
December 13, 1966 (swing shift), (10).
January 9, 1967 (swing shift), (13).
February 13, 1967 (swing shift), (17).
March 13, 1967 (swing shift), (11).
April 10, 1967 (swing shift), (14).

13. On May 8, 1967, defendant Local Union 6799 conducted two meetings for the purpose of nominating candidates for the June 12, 1967, election.

14. To be eligible as a candidate, a member had to a) be in continuous good standing from the time he joined Local Union 6799, b) be employed by H. W. Loud, Inc., and c) have attended 11 of the regular monthly meetings of defendant Local Union 6799 between August, 1965, and April, 1967. The only excuse provision actually applied in the June 12, 1967, election of Local Union 6799 was the defendants' work excuse provision. Since a substantial number of the approximately 200 swing-shift employees worked a nine-hour shift much of the time, it is estimated that at least 12% of the swing-shift qualified either through credits for overtime or by a combination of such credits and actual attendance. Since overtime for the day shift employees would not extend until or past 7:00 p.m., they could have attended the 7:00 p.m. meetings, and therefore the work excuse provision was not applicable as to them.

15. Only thirty-six (36) members of defendant Local Union 6799 actually attended at least 11 of the regular monthly meetings conducted between August, 1965 and April, 1967. Nine (9) of these were incumbent officers.

15a. The meeting attendance requirement is designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better quali-

fied to serve as officers of the union. It is a reasonable requirement, because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision.

16. The Election Committee as elected on May 8, 1967, to conduct the June 12, 1967 election, was composed of Otto K. Feenstra (Chairman), Kenneth Easin, Tribune C. Lio, Glenn Greenly, and Marvin Wright.

17. At the meetings conducted on May 8, 1967, 49 members were nominated as candidates, 22 of these declined nomination. Twenty-four met the eligibility requirements and three did not.

18. Marvin E. Wright, nominated as a candidate for the office of trustee, declined because he thought he did not satisfy the attendance requirement, because he had not attended any meetings and did not think he had sufficient overtime to qualify for sufficient credits. Mr. Wright testified that had he known that he had sufficient overtime credits, as in fact he did, he would not have declined the nomination. He testified also that prior to being on the Election Committee, he did not know where to check about possible overtime credits.

19. It was the responsibility of the Election Committee to determine whether the nominees met the eligibility requirements of the union. To determine whether nominees had attended or were entitled to be given credit for having attended at least 11 of the regular monthly meetings, the Election Committee first reviewed the attendance register of the defendant Local Union 6799, and tabulated the number of regular monthly meetings attended by each nominee. If the attendance register indicated that the nominee had attended 11 or more meetings, the Election Committee concluded that he was eligible. If the

attendance register did not show that the nominee had attended at least 11 meetings, the Election Committee requested foremen to review the Company's departmental overtime records to determine whether the nominee had been working up to or past the scheduled meeting starting time. If the total of meetings attended, according to the attendance register, and meetings excused because of working overtime totaled 11 or more, the Election Committee concluded that the nominee was eligible.

20. Each member of defendant Local Union 6799 had a dues check-off card, which he was required to show to the Outside Guard to be admitted to the regular monthly meetings. This card was punched before the member entered the meeting hall. The Election Committee decided, sometime after the nomination meetings of May 8, 1967, that this card would not be acceptable as proof of a candidate's having attended meetings, for the purpose of determining whether or not the candidate satisfied the union's attendance requirement, and that the only record acceptable for this purpose would be the Local's attendance register. The membership was advised of the above sometime after the nomination meeting.

21. The attendance register was a looseleaf binder and it was the responsibility of the Recording Secretary to place it at the entrance to the meeting room prior to the commencement of the meetings, to collect it at the conclusion, and to maintain it between meetings. Each member was supposed to sign it as he entered the meeting room and members were reminded on several occasions to do so. Two witnesses testified that they did not always sign this register, but sometimes had only their membership cards punched.

22. Neither defendant had any policy or instructions as to how much overtime a member had to have

worked on a particular meeting night to receive credit for having attended the meeting. After the nomination meetings of May 8, 1967, the Election Committee decided that anyone who worked up to or past the scheduled meeting time on a meeting night, would be entitled to credit.

23. The defendant Local Union 6799 did not maintain any records showing which members worked up to or past the scheduled meeting starting time. Company's departmental files, maintained for the purpose of equalizing overtime, however, show the time worked in hourly increments. These records do not have to be kept for any specific period of time, but some, covering the period involved in the election, were still in existence at the time of trial herein.

24. The Election Committee declared George Pruneri and Elmer G. Husman, candidates for the office of Trustee, Ray Mahan, candidate for the office of Treasurer, and Glenn Ross, candidate for the office of Financial Secretary, ineligible because they had neither attended 11 regular monthly membership meetings, nor had sufficient work excuses to receive credit for having attended a total of 11 meetings. According to the attendance register, Mr. Pruneri had attended five, Mr. Mahan had attended six, Mr. Husman had attended nine, and Mr. Ross had attended seven regular monthly meetings. Since Mr. Ross had worked 9-hour shifts on six other meeting nights, he was declared ineligible erroneously.

25. Although the Election Committee sent a letter to each of the four nominees found ineligible, advising them of said determination and giving them 10 days to question it, none contacted the Election Committee within that period. Elmer Husman did question the determination of the Election Committee after the election, presenting his punched member-

ship card as evidence of having attended sufficient meetings to qualify. Mr. Ross testified that although he really did not want to hold office and therefore did not question the Election Committee determination, he would have run had he not been declared ineligible, because too many people let George do it.

26. Defendant Local Union 6799 did not reopen nominations after the Election Committee had disqualified the four nominees as candidates.

27. Ed Poynter, who had attended eight regular monthly meetings between August, 1965, and April, 1967, and who was not entitled to sufficient credits for overtime work, was erroneously held eligible as a candidate for the office of Outside Guard.

28. The errors made by the Election Committee in holding Ross ineligible as a candidate and Poynter eligible, were honest, unintentional mistakes and did not affect the outcome.

29. The election was conducted on June 12, 1967, and the details are as follows:

President.—Don Redell, Ken Rose and Nick Hantzis were nominated as candidates for President. The election results were: Rose, 191 (elected); Hantzis, 147; Redell, 59.

Vice-President.—Mel Scruggs, George Hill, Loyd Cole, Hilton Willcox, Art Todd, Virgil Steele, and Ralph Bowman were nominated as candidates for Vice-President. Hill, Todd and Bowman declined the nomination. The election results were: Scruggs, 268 (elected); Cole, 47; Willcox, 45; Steele, 32.

Recording Secretary.—Ralph Bowman, Leonard Scandura and Tom Pipkin were nominated as candidates for Recording Secretary. Pipkin declined the nomination. The election results were: Bowman, 232 (elected); Scandura, 150.

Financial Secretary.—Glenn Ross, Ernie Crumpton and Otis Joiner were nominated as candidates for Financial Secretary. Ross was declared ineligible by the Election Committee. The election results were: Joiner, 203 (elected); Crumpton, 187.

Treasurer.—Bill Hurd, Tom Pipkin, Ray Mahan, Merry Wooten and Walt Farmer were nominated as candidates for Treasurer. Farmer declined the nomination, and Mahan was declared ineligible by the Election Committee. The election results were: Pipkin, 161 (elected); Hurd, 135; Wooten, 91.

Guide.—J. C. Scroggins, Walt Farmer, Floyd Gibson, Dan Rodriguez, Jack Cooper, Glenn Fulton, and Pete Schiavoni were nominated as candidates for Guide. Scroggins, Farmer, Rodriguez, Cooper and Schiavoni declined the nomination. The election results were: Gibson, 210 (elected); Fulton, 177.

Inside Guard.—Arnett James, Howard Reeves, George Ainsworth, J. C. Scroggins, Wally Blades, Clint Brown, and Orville Oertwig were nominated as candidates for Inside Guard. James, Ainsworth, Scroggins, Blades and Brown declined the nomination. The election results were: Reeves, 253 (elected); Oertwig, 125.

Outside Guard.—Ed Poynter, Jack Cooper, Wendell Williams, Clarence Thomas, and Gary Miller were nominated as candidates for Outside Guard. Cooper, Williams and Miller declined the nomination. Poynter and Thomas were declared eligible. The election results were: Thomas, 211 (elected); Poynter, 175.

Trustees.—The Constitution calls for the election of three trustees in each local. Eugene Houghton, Frederick Burpee, Elmer Husman, Marvin Wright, Walter Farmer, Jack Ingram, Merle Moore, Richard Mayer, and George Pruneri were nominated as candidates for Trustee. Wright, Farmer, Ingram and Moore declined

the nomination. Husman and Pruneri were declared ineligible by the Election Committee. The remaining three candidates were declared elected by the Election Committee without the need for a vote.

30. Subsequent to the June 12, 1967 election, defendant Local Union 6799 changed to only one session monthly membership meeting, held on Sunday when no members were working.

31. Defendant International Union did not advise any of the candidates that the International Union's facilities could be used to reproduce their campaign literature. Kenneth Rose, candidate for President, requested permission to use such facilities to reproduce campaign literature, and his request was granted. No candidate, other than Rose, made a similar request. Rose reproduced three different leaflets, and these were handed out at the plant's entrance gate on several occasions. A stack of leaflets was placed near the time clock. Altogether, about 1200 leaflets were prepared for Rose. Rose was billed on December 27, 1967, as follows:

2½ reams, legal size, colored 20 weight paper, at $3.90 per ream	$9.75
2 stencils, at 20 cents per stencil	.40
Secretarial services for 1 hour, at $2.89 per hour	2.89
Total	13.04

Rose paid the bill on December 28, 1967.

32. Nicholas Hantzis, a member of defendant Local Union 6799, protested the June 8, 1967 election of said Local at the July 10, 1967 regular swing-shift meeting, and again before the International Executive Board by a letter dated July 18, 1967. Hantzis did not challenge the reasonableness of the defendants' attendance requirement in either protest, but did complain, among other things, about the use of Union facilities to prepare campaign literature for presidential candidate, Ken Rose. In his complaint to the

plaintiff, dated October 11, 1967, Hantzis, whose protest had failed to obtain relief from the defendants, complained again about the use of union facilities for preparing Rose's campaign literature, and questioned also the reasonableness of the attendance requirement.

33. On November 21, 1967, a representative of the plaintiff wrote to I. W. Abel, president of defendant International (plaintiff's Exhibit 9), as relevant, as follows:

> The investigation thus far conducted established probable cause to believe that the election conducted by LU 6799 violated Title IV in the following particulars:
>
> * * * * *
>
> 2. Members were denied their right to vote for and otherwise support the candidates of their choice in that a candidate was declared ineligible who in fact did meet the candidacy requirements (401(e)).
>
> 3. A member was denied his right to be a candidate by reason of being improperly declared ineligible by the Election Committee (401(e)).
>
> 4. Members in good standing were denied the right to be candidates and to hold office (subject to Section 504 and to reasonable qualifications uniformly imposed) in the application of constitutional requirements which resulted in approximately 93.7% of the active membership being ruled ineligible (401(e)).
>
> * * * * *
>
> Money received by a labor organization by way of dues, assessments, or similar levy was used to promote the candidacy of the incumbent candidate for president in that material and equipment furnished by the International Union for the use of the International Staff Representative was utilized to reproduce campaign literature for the incumbent president (401(g)).

34. On December 18, 1967, representatives of the defendants met with representatives of the plaintiff. Among the matters discussed was the lawfulness of the meeting attendance requirement as a qualification of the right of defendant Local Union 6799's members to be candidates, the number of meetings for which Glenn Ross was entitled to receive credit because of his working hours, and the preparation of Ken Rose's campaign literature. On January 30, 1968, representatives of plaintiff and the defendants further discussed the lawfulness of the meeting attendance requirement as a qualification on the right of defendant Local Union 6799's members to be candidates for office in the June 12, 1967 election.

35. By letters dated November 22, 1967, December 26, 1967, and January 30, 1968, the defendants extended the time within which plaintiff could institute this action, and this action was ultimately filed on February 29, 1968.

CONCLUSIONS OF LAW

1. This court has jurisdiction of the subject matter and parties herein.

2. The Secretary of Labor may include in his complaint, filed pursuant to Section 402 of the LMRDA, violations disclosed by his investigation, even though said violations were not raised by the union member in his protests to the union, provided the Secretary gives the defendant union a reasonable opportunity to correct the violations, prior to filing suit. The defendants herein had adequate notice that the Secretary in his Complaint would question the reasonableness of their attendance requirement.

3. Although a two-year rule might be more reasonable, the three-year meeting attendance requirement of the defendants is not an unreasonable candidacy qualification under 401(e) of LMRDA.

4. Furthermore, the defendants' meeting attendance requirement as applied in the 1967 election of Local 6799 was not an unreasonable candidacy qualification under Section 401(e).

5. There was no violation of the requirement in Section 401(e) that qualifications be uniformly applied, by the wrongful qualification of Poynter and by the wrongful disqualification of Glenn Ross as candidates, because these were honest, unintentional mistakes on the part of the Election Committee, and because Mr. Ross failed to contest his disqualification prior to the election.

6. The monetary value of the union service or facilities provided for the preparation of a candidate's campaign literature is unimportant as regards violation of Section 401(g) of the LMRDA. Proof of any expenditure of union funds on behalf of a candidate establishes a violation of said section, and a prima facie case for the Secretary that the violation may have affected the outcome of the election.

7. The violation of Section 401(g) herein may have affected the outcome of the 1967 election of Local Union 6799 as to the office of the President.

8. The 1967 election of Local Union 6799 should, therefore, be set aside as regards the office of the President, and a new election for said office should be held, under the supervision of the plaintiff.

Dated: This 16th day of May 1969.

AVERY CRARY,
United States District Judge.

Presented by: Wm. Matthew Byrne, Jr., United States Attorney; Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division.

DZINTRA I. JANAVS,
Assistant U.S. Attorney,
Attorneys for Plaintiff.

APPENDIX D

United States District Court
Central District of California
Civil No. 68-326-E

GEORGE P. SHULTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, DEFENDANTS

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law made in this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The June 12, 1967 election of defendant Local Union 6799 for the office of President, be, and is, hereby set aside.

2. At a time to be agreed to by the parties to this action, the defendant Local Union 6799 will hold a new election for the office of President. Plaintiff will supervise the nomination, election and run-off election, if any, for said office, in accordance with Section 402(c) of LMRDA.

3. The Court will retain jurisdiction of this matter, and after the aforesaid new election (and run-off election, if any) for the office of President, upon certification to the court by the Secretary of Labor, of the

name of the person so elected, the Court will, as provided in Section 402(c) of LMRDA, enter a decree declaring such person to be the President of the defendant Local Union 6799.

Dated: This 16th day of May 1969.

AVERY CRARY,
United States District Judge.

Presented by Wm. Matthew Byrne, Jr., United States Attorney; Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division.

DZINTRA I. JANAVS,
Assistant U.S. Attorney,
Attorneys for Plaintiff.

APPENDIX E

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, provides in pertinent part:

TITLE IV. ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES

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SEC. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

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(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by

members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

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ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body or,

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation.

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor

organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

U.S. GOVERNMENT PRINTING OFFICE: 1976